

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBERT A. WHITE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 02-347-SLR
)	
STROEHMANN BAKERIES, L.C.,)	
)	
Defendant.)	

Robert A. White, pro se plaintiff.

David H. Williams, Esquire of Morris, James, Hitchens & Willimas, LLP, Wilmington, Delaware. Counsel for defendant. Of counsel: Steven R. Wall, Esquire and Thomas Benjamin Huggett, Esquire of Moran, Lewis & Bockius, LLP, Philadelphia, Pennsylvania.

MEMORANDUM OPINION

Dated: January 21, 2003
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff, Robert A. White, was an employee of defendant Stroehmann Bakeries, L.C. On January 8, 2002, plaintiff was terminated from employment by defendant. Defendant stated that the grounds for termination were that plaintiff misused company e-mail and physically assaulted another employee or customer on the company premises while on duty. As a result of the termination, plaintiff filed a complaint in the Court of Common Pleas for the State of Delaware seeking redress for wrongful termination on April 10, 2002. On May 8, 2002, defendant removed the case to this court pursuant to 28 U.S.C. §§ 1441, 1446. Presently before the court is defendant's motion to dismiss. (D.I. 3). This court has jurisdiction pursuant to 28 U.S.C. § 1331.

II. STANDARD OF REVIEW

In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the

complaint.” Id. Claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Where the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972); Gibbs v. Roman, 116 F.3d 83, 86 n.6 (3d Cir. 1997); Urrutia v. Harrisburg County Police Dep’t., 91 F.3d 451, 456 (3d Cir. 1996). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

III. DISCUSSION

Plaintiff, during the course of his employment with defendant, was a member of the Teamsters Local Union 463 (“the Union”). As a member of the Union, the terms of his employment were governed by a collective bargaining agreement (“CBA”). Defendant notes that plaintiff, as a member of the Union and subject to the CBA, is covered by the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185. As such, defendant argues that § 301 of the LMRA preempts plaintiff’s common law wrongful termination claim. Section 301 states:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the

amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a).

Interpreting § 301 of the LMRA, the Supreme Court has held that federal law preempts state law "if the resolution of a state law claim depends upon the meaning of a collective bargaining agreement," Lingle v. Norge Div. of Magic-Chef, Inc., 486 U.S. 399 (1988), or if the claims proffered by the plaintiff "substantially depend upon analysis of the terms of an agreement made between parties in a labor contract." Allis Chalmers Corp. v. Lueck, 471 U.S. 202, 220 (1985).

In the case at bar, defendant contends that resolution of plaintiff's state law claim would depend on the analysis of the terms of the CBA. Therefore, those claims must be either treated as a § 301 claim or dismissed as preempted by § 301. (D.I. 4 at 4) Next, defendant argues that plaintiff cannot establish a claim under § 301 because he has failed to allege that his right of fair representation has been violated by the Union. Rather, he is seeking an improper review of the terms of the CBA defining what constitutes a wrongful discharge. Additionally, defendant asserts that plaintiff has not exhausted his contractual remedies under the CBA, in fact, he has never pursued his termination through grievance or arbitration at all. Finally, defendant argues that plaintiff has not joined the Union in this lawsuit, therefore, complete relief cannot be accorded among the parties.

In response to defendant's arguments, plaintiff submits a letter from the Union declining to pursue his wrongful termination claim in arbitration, apparently contending that he did exhaust his CBA remedies. Additionally, plaintiff submits what appears to be the decision of an appeals board of the Delaware Department of Labor in connection with a claim for unemployment benefits from defendant. The appeals referee concluded that plaintiff was wrongfully discharged and entitled to unemployment.

The court agrees with defendant that plaintiff's action is preempted by § 301 of the LMRA. Therefore, he must allege a viable LMRA claim to survive dismissal. Under federal law, plaintiffs typically do not have the right to seek direct judicial review of the terms of the CBA, rather, they must exhaust the contractual grievance procedures under the CBA negotiated by the Union. See Vaca v. Sipes, 386 U.S. 171, 185 (1967). While failure to exhaust remedies under the CBA is typically cause for dismissal, where a plaintiff can prove that the Union, as bargaining agent, breached its duty of fair representation in its handling of the employee's grievance, courts may waive the exhaustion requirement. Id.

Accepting the facts alleged by plaintiff as true and construing all reasonable inferences in his favor, the court concludes that plaintiff did exhaust his CBA remedies. The

letter submitted by plaintiff from the Union denying his arbitration request is unchallenged by defendant. However, in order to state a viable § 301/breach of fiduciary duty claim, plaintiff must prove that the employer breached the CBA and the Union breached its duty to fairly represent the employee; "the two claims are inextricably interdependent." Del Costello v. Int'l Brotherhood of Teamsters, 462 U.S. 151, 164-65 (1983).

In his complaint, plaintiff merely states that "[d]efendant acted in a wrongful fashion and without just cause...." Furthermore, plaintiff alleges no facts whatsoever related to the Union's representation and has failed to join the Union as a party. Therefore, the court concludes that plaintiff has failed to allege a viable claim under the LMRA and defendant's motion to dismiss shall be granted. An appropriate order shall issue.

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O R D E R

At Wilmington this 21st day of January, 2003, consistent with the memorandum opinion issued this same day; IT IS ORDERED that defendants' motion to dismiss (D.I. 3) is granted.

Sue L. Robinson
United States District Judge